Consumer Federation of America

August 11, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

EX PARTE

Re: Ameritech 271 Application for Michigan
CC Docket No. 97-137

Dear Mr. Caton:

Included herein for filing in the above referenced proceeding are two copies of a letter sent to Chairman Reed Hundt, Commissioner's Quello, Ness, and Chong, and Common Carrier Bureau Chief Gina Keeney.

Please make the letter and attachments part of the formal record in the above referenced proceeding.

Sincerely,

Mark N. Cooper

Mark N. Cooper

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1424 16th Street, N.W., Suite 604 • Washington, D.C. 20036 • (202) 387-6121

Consumer Federation of America

August 11, 1997

The Honorable Reed Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Ameritech 271 Application for Michigan
CC Docket No. 97- 137

Dear Chairman Hundt:

As you are aware, there are massive amounts of materials before the Commission as it conducts its review of Ameritech's application to provide in-region long distance services in Michigan. As the task of evaluating the record at the Commission along with the record compiled during proceedings in the state moves forward, the Consumer Federation of America (CFA) thought it especially important to highlight the attached materials and to focus the Commission's attention on the bedrock issue in this proceeding.

Included as attachments are the joint comments of numerous Attorneys General which were part of SBC's Oklahoma 271 Application record, a filing by the Oklahoma Attorney General from that same proceeding and a filing at the state level by the Michigan Consumer Federation (one of CFA's state and local members). CFA believes these particular filings are of special value for the Commission's review of the Michigan application. These documents all come from independent third parties that have expertise in understanding and interpreting the 1996 Act's provisions and what is actually happening on the ground in the states. Furthermore, we thought it important that the filings by the Attorneys General which were valuable for review of SBC's Oklahoma application be part of the record in the Michigan review.

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Congress understood that dismantling the century old monopoly in local service would be the most difficult public policy task undertaken by the Telecommunications Act of 1996. It understood that consumers have a huge stake in the introduction of competition into the local telephone market. That is why it included over lapping reviews by state and federal agencies of specific and extensive prior conditions and outcome oriented standards in Section 271. We believe that the Commission must follow the spirit and letter of the Act to ensure vigorous competition at the local level before the regional bell operating companies are allowed to sell in-region long distance. The section 271 proceedings are literally the last chance for local competition.

We believe that the failure to meet the 14 point competitive checklist in Michigan, the numerous operational problems and the absence of meaningful facilities-based competition for residential customers should be enough to warrant a denial of Ameritech's application. Add to this the public interest review, which is highlighted in the comments of the Michigan Consumer Federation and CFA believes there is absolutely no way Ameritech's application to provide long distance service in Michigan can pass muster.

As the attached comments of the Michigan Consumer Federation point out, consumers in Michigan were promised competition by state statute half a decade before federal legislation was enacted. Consumer groups representing residential ratepayers have participated in proceeding after proceeding intended to bring local competition to Michigan. They still do not have it. True competition for consumers is the acid test of section 271. Ameritech Michigan fails that test.

Sincerely,

Mark N. Cooper
Director of Research

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF ERNEST G. JOHNSON, DIRECTOR F THE PUBLIC UTILITY DIVISION, OKLAHOMA CORPORATION COMMISSION TO EXPLORE THE REQUIREMENTS OF SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996	)	CAUSE NO. PUD 970000064

COMMENTS OF THE OKLAHOMA ATTORNEY GENRAL

The Attorney General hereby submits these comments in response to Southwestern Bell Telephone Company's (SWBT) proposed section 271(c) petition and supporting documentation. The Attorney General applauds the Oklahoma Corporation Commission (Commission) for its foresight in instituting this proceeding.

I. Section 271 calls upon this Commission to review SWBT's filing for compliance with the requirements of subsection (c)

Section 271 of the Telecommunications Act of 1996 (Act), 47 U.S.C. § 271, provides the basis for this Commission's review of SWBT's contemplated filing with the Federal Communications Commission (FCC). It permits SWBT to "provide interLATA services originating in [Oklahoma] if the [FCC] approves the application . . . under subsection (d)(3)." Id. § 271(b)(1). Subsection (d)(3) provides that the FCC shall not approve such an application unless it finds, *inter alia*, that

> (A) [SWBT] has met the requirements of subsection (c)(1) and –
> (i) with respect to access and interconnection provided pursuant to subsection (c)(1)(A), has fully implemented the competitive checklist in subsection (c)(2)(B); **or**
> (ii) with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B), such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B).

Id. § 271(d)(3) (emphasis added).

Before it can approve such an application, the Act requires the FCC to consult with this Commission "to verify the compliance of [SWBT] with the requirements of subsection (c) [of section 271]." Id. § 271(d)(2)(B). Subsection (c) sets forth the requirements that SWBT has the burden of showing as being satisfied and addresses two interrelated sets of criteria: (c)(1) addresses the bases for petitioning for interLATA authority, and (c)(2) addresses the requirements that must be satisfied for the respective (c)(1) basis.

Subsection (c)(1) provides two **mutually exclusive** bases for SWBT to acquire in-region interLATA authority: (1) subsection (c)(1)(A) [hereinafter referred to as "Track A"] and (2) subsection (c)(1)(B) [hereinafter referred to as "Track B"]. Id. § 271(c)(1)(A) & (B). SWBT can pursue either Track A exclusively or Track B exclusively. The Track pursued by SWBT determines both the relevant documents and the standard by which this Commission and the FCC must review the application's satisfaction of the Competitive checklist requirements of subsection (c)(2)(B), id. § 271(c)(2)(B).

Track A is available to SWBT only "if it has entered into one or more binding agreements that have been approved under section 252" of the Act. Track B is available to SWBT only if (1) no provider of telephone exchange service has requested access and interconnection of its facilities to the facilities of SWBT; (2) this Commission certifies that the only such provider or providers making such a request have failed to negotiate an agreement in good faith; or (3) this Commission certifies that, having made such an agreement, such provider or providers have violated terms of the agreement by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such an agreement.

The Commission's review of SWBT's filing in this proceeding, therefore, should focus on the requirements of subsection (c). The Commission must determine, first, whether SWBT can satisfy the requirements of subsection (c)(2) through Track A or Track B, or through Track A and Track B. After it makes this determination, the Commission must decide the standard to apply in determining whether SWBT has satisfied the Competitive checklist requirements. Finally, the Commission must apply this standard to determine if the Competitive checklist requirements have been satisfied.

II. Track A and Track B are mutually exclusive in that SWBT can apply for interLATA authority based upon either its approved interconnection agreements or its Statement of Generally Available Terms and Conditions, but not both.

Subsection (c)(1) states that a Bell operating company (BOC) "meets the requirements of this paragraph if it meets the requirements of [Track A] **or** [Track B] for each State for which [interLATA] authorization is sought." Id. § 271(c)(1) (emphasis added). SWBT at first seems to agree that it can pursue only either Track A authorization or Track B authorization. It states that "[w]ith a Statement [of Generally Available Terms and Conditions] in effect, SWBT is able to apply for interLATA relief in Oklahoma under [Track B] in the event that the FCC finds that SWBT has received no request for access and interconnection from any CLEC, including Brooks Fiber, **whose request would bar such a filing.**" SWBT Brief at 6 (emphasis added). However, later SWBT argues that regardless of which Track it pursues, it can satisfy the competitive checklist requirements by relying upon its "statement of terms and conditions, or state-approved agreements, or both." Id. at 13.

A. The competitive checklist requirements can be satisfied by (1) Commission approved interconnection agreements, if SWBT pursues Track A authorization, or (2) an effective Statement of Generally Available Terms and Conditions, if SWBT pursues Track B authorization, but the competitive checklist requirements cannot be satisfied by a combination of both

Just as the requirements of Track A and Track B are mutually exclusive, so to is the satisfaction of the competitive checklist requirements restricted to Commission approved interconnection agreements under Track A, **or** a Statement of Generally Available Terms and Conditions under Track B. The statutory language of the Act is clear, however, that the competitive checklist requirements cannot be satisfied by a combination of both Commission approved interconnection agreements **and** a Statement of Generally Available Terms and Conditions. SWBT's misinterpretation of the Act ignores Congress' deliberate selection of particular words.

Each time section 271 links interconnection agreements to a statement of terms and conditions, the linkage is by the disjunctive "or." Regardless of whether Congress is addressing the distinction between Track A and Track B, or the distinction between access and interconnection pursuant to interconnection agreements and access and interconnection pursuant to a statement of terms and conditions, Congress purposefully chose to use the word "or" to show the mutually exclusive nature of these terms.[1]

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[1] See, e.g., 47 U.S.C. § 271(c)(1) ("Agreement **or** statement. A [BOC] meets the requirements of this paragraph if it meets the requirements of [Track A] **or** [Track B]") (emphasis added); id. § 271(c)(2)(A) ("A [BOC] meets the requirements of this paragraph if . . . (I) [it] is providing access and interconnection pursuant to one or more agreements, **or** (II) [it] is generally offering access and interconnection pursuant to a statement [of terms and conditions]") (emphasis added); id. § 271(d)(3)(A) ("The [FCC] shall not approve the authorization requested in an application . . . unless it finds that . . . (i) with respect to access and interconnection provided pursuant to [Track A], [the BOC] has fully implemented the competitive checklist in subsection (c)(2)(B); **or** (ii) with respect to

Thus, if SWBT proceeds under Track A, it can meet the requirements of the competitive checklist only by showing that its Commission approved interconnection agreements satisfy the requirements of the competitive checklist. On the other hand, if SWBT proceeds under Track B, it can meet the requirements of the competitive checklist only by showing that its Statement of Generally Available Terms and Conditions satisfies the requirements of the competitive checklist.

B. Unless the Commission certifies that Brooks Fiber has violated the terms of its interconnection agreement by failing to comply with the implementation schedule contained in such agreement, Track B authorization is foreclosed to SWBT

As SWBT acknowledges, by virtue of its provision of access and interconnection to Brooks Fiber pursuant to a Commission approved agreement, Track A is available to SWBT to seek interLATA authority, which necessarily forecloses its ability to pursue Track B authorization, unless the Commission finds that Brooks Fiber has failed to comply with the implementation schedule contained in the agreement. The Attorney General has no evidence of such a failure on Brooks Fiber's part. Therefore, if SWBT is to be granted interLATA authorization, it must be pursuant the standards that section 271 applies to Track A interconnection agreements.

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access and interconnection generally offered pursuant to a statement under [Track B], such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B)") (emphasis added).

III. In determining whether SWBT's interconnection agreement(s)[2] satisfy the competitive checklist, the standard the Commission must apply is whether, through such agreement(s), SWBT is actually providing access and interconnection to its facilities, as opposed to merely offering such access and interconnection

Subsection (c)(2)(A) provides that in order for SWBT's application to be approved, it must show that it "is **providing** access and interconnection pursuant to one or more agreements" or "is generally **offering** access and interconnection pursuant to a statement" of terms and conditions. 47 U.S.C. § 271(c)(2)(A)(i) (emphasis added). Clearly, a distinction between "providing" and "offering" was intended by Congress. This distinction is important, because the Commission's standard for evaluating the competitive checklist requirements turns on such a distinction. Since, as addressed above, whether SWBT meets the requirements of the competitive checklist depends upon the interconnection agreements approved by the Commission, this Commission must decide what "providing" means and if it has a different meaning from "offering."

In its Brief, SWBT suggests that "a Bell company provides access to its facilities and services through an interconnection agreement when the CLEC has a contractual right to obtain the facilities and services, **whether or not they are taken.**" SWBT Brief at 13 (emphasis added). To support this assertion, SWBT refers to the dictionary meaning of the word "provide" and defines it as to "make available." SWBT Brief at 13.

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[2] The Attorney General assumes, for the sake of argument only, that it is permissible for SWBT to rely on more than one agreement to satisfy the competitive checklist requirements, rather than requiring SWBT to demonstrate that the competitive checklist requirements are met in one agreement. However, the Attorney General reserves the right to address this issue in subsequent comments and at the hearing in this cause, especially in light of the fact that the FCC's interpretation of the Act's Most Favored Nations clause has been stayed. The Attorney General's comments herein should in no way be seen indicative of his position on this issue.

The Oxford American Dictionary, however, contains no such definition for "provide." Rather, it defines "provide" as "to cause (a person) to have possession or use of something, to supply." Oxford American Dictionary 538 (1980). This entails more than merely to "make available." Therefore, in determining if the competitive checklist items are satisfied, "whether or not they are taken" is certainly a relevant criterion in this determination. If Congress had not intended different meanings for "providing" and "offering" then it would not have used different words to convey the same meaning.

III. Whether SWBT is providing the items contained in the competitive checklist

The Attorney General has not yet developed his position on this issue. He reserves the right to address this issue, and any other issue not addressed herein, and to modify his comments regarding the issues addressed herein, in subsequent comments and/or at the hearing in this Cause.

Respectfully Submitted,

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA

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CERTIFICATE OF SERVICE

On this11th day of March, 1997, a true and correct copy of the foregoing was mailed, telecopied and/or hand-delivered to:

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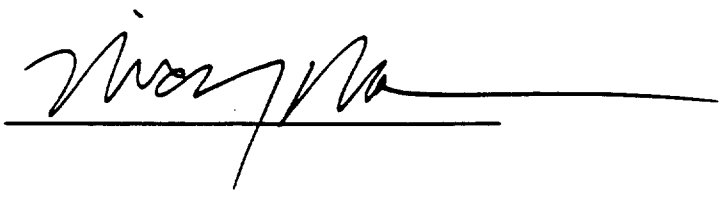

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of	)	
	)	
Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Oklahoma	)	CC Docket No. 97-121

REPLY COMMENTS OF THE ATTORNEYS GENERAL OF DELAWARE, FLORIDA, IOWA, MARYLAND, MASSACHUSETTS, MISSISSIPPI, MISSOURI, NEW YORK, NORTH DAKOTA, OKLAHOMA, UTAH, WEST VIRGINIA AND WISCONSIN

The Attorneys General of Delaware, Florida, Iowa, Maryland, Massachusetts, Mississippi, Missouri, New York, North Dakota, Oklahoma, Utah, West Virginia and Wisconsin (the Attorneys General) submit these reply comments in response to the request of the Federal Communications Commission (Commission) for comments regarding the application by SBC Communications, Inc. (SBC) for authorization under Section 271 of the Communications Act, as amended by the Telecommunications Act of 1996 (the 1996 Act), to provide in-region, interLATA service in the State of Oklahoma.

INTRODUCTION

SBC has filed an application for authorization to provide in-region, interLATA service in the State of Oklahoma, pursuant to section 271 of the 1996 Act. If the application is granted, SBC will become the first Bell Operating Company (BOC) authorized to provide in-region interLATA service. Even though SBC's application directly affects only Oklahoma, the Attorneys General submit these

comments because the FCC's decision in this case is likely to set an important precedent for future applications under section 271 of the 1996 Act.

In considering SBC's application, the Commission will likely establish the framework it will follow for subsequent section 271 applications. The procedures and standards adopted in this docket should shape the process by which, consistent with the intent of the 1996 Act, BOCs across the country will seek authority to begin offering in-region, interLATA service.

SBC's and other BOCs' entry into their in-region long distance markets should enhance consumer interests by increasing competition in those markets, so long as the BOCs are prevented from obtaining and exploiting unfair advantages from their dominant positions in their local exchange markets. However, the issue to be addressed in this proceeding is not whether SBC should be authorized to enter the interLATA market in Oklahoma, but when that authority should be granted. While aware of the benefits of increased interexchange competition, Congress did not authorize immediate BOC entry into those markets in the 1996 Act. Instead, the Act holds out long distance authority as an incentive to induce BOC cooperation in the difficult task of opening the local exchange markets to competition.

The fundamental policy question that the Commission must resolve in this proceeding is whether SBC has proved that it has discharged all its market-opening responsibilities in Oklahoma such that the 1996 Act's goal of introducing effective competition into local exchange markets has been achieved in the State.

The Commission must also consider the extent to which it can rely upon the consultation provided by the Oklahoma Corporation Commission in this proceeding. If the Oklahoma Commission has fallen short in its review of SBC's compliance with the competitive checklist set forth in section 271(c)(2)(B) of the 1996 Act, it is incumbent upon this Commission to say so. Otherwise, the Commission runs the risk of undermining the work of public utility commissions (PUCs) in other States that, often with the assistance of the State's Attorney General's office, have undertaken or will undertake thoroughgoing reviews of their local BOC's compliance with the requirements of section 271. A Commission decision that appears to sanction Oklahoma's level of scrutiny will endanger PUC efforts in other States to conduct more detailed reviews.

SBC's application is based on factual assertions regarding competitive conditions in Oklahoma markets -- assertions that have been contested by other parties in this proceeding -- and a narrow interpretation of section 271 that takes a minimalist view of the showing SBC must make to satisfy the statutory standards. These comments are not intended to take sides with respect to factual disputes, but instead set forth our views on the public policy considerations and legal principles the Commission should apply in considering SBC's application.

THE INTEREST OF THE STATES OF DELAWARE, FLORIDA, IOWA, MARYLAND, MASSACHUSETTS, MISSISSIPPI, MISSOURI, NEW YORK, NORTH DAKOTA, OKLAHOMA, UTAH, WEST VIRGINIA AND WISCONSIN

State Attorneys General have unique statutory responsibilities with respect to the development of an effective pro-competitive, deregulatory policy for telecommunications services. Attorneys General are the primary enforcers of state and federal antitrust laws at the State level and

have long represented the competitive interests of their States and citizens. We have actively represented these interests before this Commission and before our State PUCs to urge the implementation of effective policies to expand competition in all telecommunications markets. The significance of the Commission's actions on the development of local exchange competition in our States as well as the importance of effective regulatory review of BOCs' market-opening activities to the section 271 process prompt our participation in this proceeding.

THE SECTION 271 TEST FOR BOC ENTRY INTO IN-REGION, INTERLATA MARKETS

Sections 271(d)(3)(A) and (B) set forth a number of specific requirements for a BOC seeking interLATA authority. A BOC showing that these requirements have been satisfied is necessary but not sufficient for Commission approval of an application. Consistent with section 271(d)(3)(C), the Commission must also determine that "the requested authorization is consistent with the public interest, convenience, and necessity."

This statutory standard directs the Commission to consider not only the specific requirements set forth in the statute but also the broader goals that the requirements are intended to serve. We believe that the statutory language, considered as a whole, points toward an overall test for BOC entry into interLATA markets. In order to qualify for authority to provide in-region, interLATA service in a state, a BOC should be required to prove that there are no significant impediments to effective, full-scale entry into local exchange competition in the state.[1]

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[1] In its Evaluation submitted in this proceeding, the U.S. Department of Justice states that in (continued...)

The best way to make this showing would be through proof that broad-based competitive entry into local exchange markets has been successful in the State. If broad-based entry into local exchange markets has not occurred in the State, that would not foreclose the possibility of approval of a section 271 application if the BOC can otherwise prove that there are no significant impediments to such entry.

Identification of an overall test for BOC entry into interLATA markets provides a focus to the section 271 requirements. It helps avoid the danger of interpreting those requirements as an unrelated series of minimal obligations that individually may seem consistent with the language of the statute but in combination fail to add up to a coherent and sensible test for measuring a BOC's market-opening activities.

As the following sections of these comments explain, our understanding of the overall test embodied in section 271 helps shape our views of the showings necessary to satisfy either the Track A or Track B requirements of the statute; the importance of evidence that a section 271 applicant provides nondiscriminatory access to its operational support systems; and the essential role of State PUCs in the section 271 application review process.

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[1](...continued)
evaluating whether granting a BOC's application for interLATA entry would be consistent with the public interest, the Department seeks to determine whether the BOC's local markets have been irreversibly opened to competition. As a practical matter, we do not perceive significant differences between this test and the one we describe.

THE APPROPRIATE TESTS UNDER TRACK A AND TRACK B

In order to qualify for in-region, interLATA authority, a BOC must provide or generally offer to competitive local exchange carriers (CLECs) all the services included in the competitive checklist set forth in sec. 271(c)(2)(B); structure its proposed interLATA operation in a way that complies with the separate affiliate requirements of section 272; and satisfy either the requirements set forth in section 271(c)(1)(A)(Track A) or section 271(c)(1)(B)(Track B).

A BOC following Track A must prove that it has entered into at least one PUC-approved interconnection agreement with an unaffiliated CLEC that is providing local service to residential and business subscribers either exclusively or predominantly over its own telephone exchange service facilities.

The purpose of the Track A requirements is to ensure that, at a minimum, competitive forces are actually beginning to have an impact in the local exchange markets and are starting to exert competitive discipline over the BOC. The assumption behind the Track A requirement is that once conditions are conducive to competitive entry into local service markets and the process of competitive entry commences, that process will continue and CLECs will become an increasingly significant presence in the market.

To satisfy the Track A requirements, the applicant BOC should show that competitive local exchange entry has begun and that standards for the BOC's dealings with the new entrants have been established. There is no metrics test that requires a showing of a specific level of market concentration on the part of CLECs in the State. But neither should it be sufficient for the BOC to

show that a CLEC is providing service to a handful of subscribers in the State if the CLEC's operations are so limited that no reliable inferences may be drawn about the feasibility of full scale competitive entry into local exchange markets in the State on the basis of such operations.

The Track B alternative for interLATA authority is considerably more limited. Track B is available to an applicant BOC if no unaffiliated CLEC has requested access and interconnection with the BOC in the State. Once a timely request for access and interconnection has been made, however, the BOC is precluded from relying upon Track B as a matter of right. Since unaffiliated CLECs have in fact requested access and interconnection from BOCs in all States, this avenue for interLATA authority is unavailable.

Track B also includes the additional provision that it may be invoked if the State PUC certifies that the only CLECs that have made requests for access or interconnection in the State have failed to negotiate interconnection agreements with the BOC in good faith, or have failed to comply, within a reasonable period of time, with the implementation schedule contained in their interconnection agreements. But as a general matter, Track B will be unavailable as a means of BOC in-region interLATA entry in a State from the time requests for interconnection and access were made until the implementation schedules included in interconnection agreements have been breached.

AN APPLICANT BOC'S OPERATIONS SUPPORT SYSTEMS MUST BE PROVEN ADEQUATE UNDER CONDITIONS OF ACTUAL COMPETITION

In reviewing compliance with the competitive checklist, the Commission should pay particular attention to the applicant BOC's efforts to provide nondiscriminatory access to its

operations support systems (OSS), which is a critical prerequisite to the development of effective local competition. OSS are the software interfaces and other systems BOCs put into place in order to provide CLECs access to information in the BOC's databases that the CLECs need in order to compete effectively. Nondiscriminatory access requires the implementation of OSS functions that are sufficiently comparable to what is available internally to the BOC that they do not present barriers to effective competition by CLECs.

CLECs need smooth and effective communications with the BOCs' databases in order to enable effective local exchange competition. If a BOC's OSS do not function well or break down, this will impede the CLEC's ability to service its customers, and the customer will blame the CLEC rather than the BOC. Attentive regulatory review of BOCs' efforts at providing nondiscriminatory access to OSS is necessary, since providing this sort of assistance to its competitors runs strongly counter to the natural competitive instincts of any business.

A BOC's OSS capabilities should be required to pass at least two tests before they are deemed to satisfy the competitive checklist. First, the BOC must demonstrate that the systems incorporate sufficient capacity to be able to handle the volumes of service reasonably anticipated when local competition has reached a mature state. Second, the BOC's OSS capabilities must be proven adequate in fact to handle the burdens placed upon them as local competition first takes root. Testing of the systems by the BOC is not enough to provide reasonable assurance that they will function as planned with the systems of CLECs. It will require some experience with the systems

on a day-to-day basis under conditions of genuine local competition in order to assess their adequacy on this measure.

Even if a BOC acts with the best of intentions, it seems likely that the necessarily complex OSS functions it designs and implements will require some shakedown and debugging period before they interact smoothly with the systems of CLECs. InterLATA approval should not be granted before the debugging has been successfully completed, since the prospect of such approval provides a strong incentive for the BOC to focus on this problem and devote the resources necessary to solve it.

It is also important that there be some accumulation of experience in a competitive environment before a section 271 application is approved so that the disputes that will inevitably arise about the scope of the BOC's interconnection obligations can be identified and addressed while the BOC still has a powerful incentive to resolve the dispute promptly.

Finally, some record of experience under conditions of local competition is necessary to reveal whether a BOC will engage in unfair or discriminatory practices to inhibit entry into local exchange services markets. As a provider of essential bottleneck facilities, BOCs retain considerable market power in local exchange markets. The importance of OSS is just one example of BOCs' competitive significance in these markets. BOC promises of compliance with statutory prohibitions against unfair and discriminatory practices must be confirmed in the course of confronting real and effective competition in the marketplace.

THE CRITICAL ROLE OF STATE PUC REVIEW OF BOC OPERATIONS

The section 271 application review process entails a substantial role for State PUCs. Among other requirements, the BOC has the burden of proving by credible evidence that it satisfies either Track A or Track B, and that it provides or generally offers access and interconnection services that fully comply with the competitive checklist set forth in section 271(c)(2)(B). Since the Commission must act on section 271 applications within 90 days, the administrative fact-finding proceedings to determine whether the BOC satisfies these requirements must necessarily take place at the State level. In addition, under section 271(d)(2)(B), the Commission must consult with the State PUC "in order to verify the compliance" of the BOC with the section 271 requirements.

Since the BOC has the burden of proof, it is in the BOC's interest that the state PUC has undertaken a thorough review of the BOC's section 271 compliance and reached a favorable conclusion. Without an adequate record developed at the state PUC through proceedings that include, as appropriate, the opportunity for the submission of evidence and cross-examination of witnesses, the applicant BOC will be severely challenged in the FCC proceeding to make the sort of evidentiary showing of compliance that the legislative scheme requires. Anticipating this need, a number of State PUCs have commenced proceedings to examine the status of their BOC's section 271 compliance, often with the participation of the State's Attorney General's office.

The Commission plays a critical role in supporting thorough and conscientious State reviews of BOC section 271 compliance. If the record of an application coming before the Commission includes favorable findings resulting from a comprehensive and exacting State PUC investigation of the BOC's compliance, then that should weigh heavily in the BOC's favor in the Commission's

determination. However, if an application comes before the Commission that is either not endorsed by the State PUC, or is supported only by a superficial and inadequate PUC proceeding that applies inappropriate standards or fails to establish a reliable evidentiary basis for its conclusions, then it becomes the responsibility of the Commission to reinforce the efforts of the many PUCs that are doing careful and thorough jobs of BOC compliance review by concluding that the BOC has failed in its burden of proof and rejecting the application.

The review by the Oklahoma Corporation Commission of SBC's section 271 compliance appears to fall well short of what is required. While the Commission held a hearing on SBC's compliance with the competitive checklist, SBC's witnesses were not made available for cross-examination. The Administrative Law Judge (ALJ) presiding at the hearing recommended that the Commission find that SBC has not satisfied the elements of the competitive checklist, a conclusion that was endorsed by the Commission staff and the Attorney General's office. For reasons that seem inadequately explained in the record, and over a strong dissent, a majority of the Commission overruled that ALJ's recommendation and found that SBC did meet the competitive checklist requirements. The Commission failed to support this conclusion with detailed findings as to each of the fourteen competitive checklist items.

If the Commission approves SBC's application on the state of this record, then the PUCs that have interpreted their section 271 review obligations as requiring a considerably more thorough review will confront questions from their BOCs as to why they are requiring more than the Commission deemed necessary when ruling on SBC's application. In order to avoid undermining

these other PUC efforts that are ultimately intended to improve the Commission's decision-making ability in section 271 application proceedings, the Commission should send the message that it does require more of SBC and the Oklahoma Commission by rejecting SBC's application.

THE SECTION 271 REVIEW PROCESS MUST BE FAIR TO APPLICANT BOCS

While SBC's application should be denied, there should be no presumption against approval of a properly-supported BOC application for in-region, interLATA authority. The goal of in-region interLATA entry must be reasonably achievable for BOCs. Only if it is will the prospect of approval continue to provide an incentive for BOCs to undertake the market-opening activities that the statute was intended to foster. In addition, there seems little doubt that BOC entry into long distance will be a procompetitive development, so long as BOCs are prevented from obtaining and exploiting unfair advantages from their dominant position in the local exchange markets. The approach that the Commission takes to the section 271 process should result in the rejection of applications by BOCs that have not done all the statute requires, but it should also result in the approval of applications by BOCs that have effectively opened their local exchange markets to competition.

CONCLUSION

The Commission should employ a broad, procompetitive conception of the public interest in considering SBC's application and subsequent BOC applications for authority to provide in-region, interLATA services. The Commission should approach its task in a way that supports the efforts of those State PUCs that have undertaken thoroughgoing reviews of their BOC's compliance with the requirements of the statute.

It should be applicant BOCs' burden to prove that there are no significant impediments to effective, full-scale entry into local exchange competition in the State. This is likely to require a showing of actual experience under local exchange competition sufficient to conclude that new entrants are able to compete on an equal footing with incumbent BOCs for the business of local exchange subscribers.

Respectfully submitted,

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